

BHUJ BRANCH OF WIRC OF ICAI

E-NEWSLETTER FOR THE MONTH OF JUNE-2018

(FOR PRIVATE CIRCULATION ONLY)

CA. Darshan Khandol

Chairman

8866583411

CA. Hardik Thacker

WICASA Chairman &

Vice Chairman

9825858580

CA. Jitendra Thacker

Secretary & Treasurer

9825537937

CA. Bunty Popat

Past Chairman

9426803457

CA. Hemen Furiya

Member

9879379801

CA. Bhavee Thacker

Imm. Past Chairperson

9825227449

CA. Pradeep Agrawal

Branch Nominee

9898560967

CA Jagrut Anjaria

Newsletter Advisor

9426788728

Address:-

311, Balram Complex, 3rd Floor

Near ICICI Bank, Station Road

Bhuj-Kachchh

Phone:-258580

E-mail:-bhujbranch.wirc@gmail.com



CHAIRMAN'S COMMUNICATION

Dear Professional Colleagues,

Please accept my compliments. All of us have grown older and wiser by a month since we last met on this page of the Newsletter. As you know, I am not a comfortable writer, so I request all of you to excuse me for being precise with my communications.

The month that passed by belonged to the students. It began with the Examinations. After the examinations, we had Branch Level Events under CA Students' Talent Search-2018. This event was held on 27th of May. It was heartening that a good number of students came forward to participate in Quiz and Elocution contests. We had one entry in Instrument Music Category as well. The icing on the cake was that Bhuj Branch is going to be represented at Regional Level Contest under all the three categories, Elocution, Quiz and Instrument Music. There was one more significant development concerning students and that was the formation of WICASA Committee. With the formation of WICASA Committee the Students Branch at Bhuj has become fully functional now and our strength stands augmented by five fresh brains and ten young hands. We hope that this new committee will keep us more and more busy in the months to come.

Turing to CPE events, we had two such events since we talked last on this page. On 21st May, we had a four hour CPE on GST issues which was conducted by our "in house" faculties, CA Hardik P.Thacker and CA Deep Koradia. On 29th we had a three hour CPE on LLP by guest faculty from Ahmedabad, CA Vikas Jain.

CHAIRMAN'S COMMUNICATION

On 7th of June, we had the occasion to welcome newly appointed Income Tax Officers Vasani Sir and Sharma Sir at Bhuj as well as to express our wishes for ITO Mangani Sir who got transferred from Bhuj IT Office. The function was organized in coordination with Kutch Tax Consultation Association and Income Tax Staff Association and was graced by the presence of JCIT Gandhidham, Shree Jain Sir. It turned out to be a nice informal gathering with most of the leading lights of the administration and profession present.

Looking ahead, it seems that the next month is going to be as eventful as the previous month. To begin with, there will be CPT examination on 17th June. On 21st June, we are going to celebrate World Yog Day and on 22nd we shall have CCM Tarun Ghia with us for a three hour CPE. Details of both these events are there under for your information section of this newsletter.

On 1st July, we shall celebrate CA Day. As per the Guidelines of the Institute we shall have a number of events to mark this special day. Detailed itinerary of the same is there under the "For Your Information" section.

Let me take this opportunity to express a wish that all these events will be well attended by the members.

Before concluding, a few words on this edition of the newsletter. In this edition we are reproducing the text of the speech delivered by all the three winners of the elocution contest at Branch Level CA Students' Talent Search. Under the "Allied Laws" section, CA Vaibhav Sheth is commencing a new series of articles on RERA. We also have two debutants writers, CA Aishwarya Joshi and CA Yash Bhide while CA Bhavik Mehta, who has been a regular writer for our newsletter has contributed an article on GST. Let me take this opportunity to invite all the willing members to join the team of writers. Please come forward without any hesitation, this is your Newsletter, let it be the first step in your journey to be a writer.

With these words, I, on behalf of the entire Managing Committee, express my sincere gratitude towards all the members for the support and co operation that we are receiving for carrying out responsibilities entrusted to us.

Thank you.

CA Darshan Khandol
Chairman
Bhuj Branch of WIRC of ICAI

Bhuj Branch Of WICASA Of ICAI

Managing Committee - 2018-19

| | | |
|------------------|------------------------|------------|
| Chairman | CA. Hardik P. Thacker | 9825858580 |
| Vice Chairman | Miss.Disha I. Thacker | 8238047988 |
| Secretary | Miss. Vrushali K. Shah | 7990188040 |
| Treasurer | Mr.Bharat R. Khungla | 8160598849 |
| Committee Member | Mr.Sumit S. Khungla | 8238543392 |
| Committee Member | Miss. Mansi N. Thacker | 9429341297 |

Bhuj Branch Of WIRC Of ICAI

CPE Committee - 2018-19

| | |
|-------------------|------------|
| CA. Kapil Thacker | 9428472676 |
| CA. Abhay Thacker | 9033453753 |
| CA. Nikit Desai | 9033493970 |
| CA. Yash Bhide | 9687361029 |

Bhuj Branch Of WIRC Of ICAI

Taxation Committee - 2018-19

| | |
|-------------------|------------|
| CA. Umang Thacker | 7016798266 |
| CA. Deep Koradia | 9429042996 |
| CA. Jekil Shah | 9427184589 |
| CA. Vaibhav Sheth | 9429295510 |

Bhuj Branch Of WIRC Of ICAI

Members in Industries Committee - 2018-19

| | |
|-------------------|------------|
| CA. Jigar Thacker | 9428032232 |
| CA. Ankit Mota | 9998559122 |

Bhuj Branch Of WIRC Of ICAI

Newsletter Committee - 2018-19

| | |
|---------------------|------------|
| CA. Aishwarya Joshi | 9429015386 |
| CA. Sonali Asodiya | 9904188092 |
| CA. Kiran Thacker | 9909603962 |
| CA. Manad Anjaria | 9409475070 |

Bhuj Branch Of WIRC Of ICAI

Student Committee - 2018-19

| | |
|--------------------|------------|
| CA. Richa Shah | 9429561050 |
| CA. Shweta Vora | 9825377616 |
| CA. Chirag Shah | 9724797906 |
| CA. Jagdish Hirani | 9879740857 |

Bhuj Branch Of WIRC Of ICAI

Information Technology Committee - 2018-19

| | |
|-------------------|------------|
| CA. Ishan Shukla | 9824073398 |
| CA. Jwalant Bhatt | 9925015563 |
| | |

Bhuj Branch Of WIRC Of ICAI

Library and Infrastructure Committee - 2018-19

| | |
|--------------------|------------|
| CA. Vatsal Parekh | 9428234457 |
| CA. Ashish Gadhavi | 9925738543 |

Bhuj Branch Of WIRC Of ICAI

YOG DAY CELEBRATION

| | |
|--|-----------------------------|
| On 21 st June, 2018, we shall get together at Time Square, V.K.Patel Ground, Bhaveshwar Nagar, Lal Tekari, BHUJ and learn and refresh ourselves with some Yog / Pranayam Techniques | Time:- 06:30 am to 08:00 am |
|--|-----------------------------|

Bhuj Branch Of WIRC Of ICAI

CPE EVENT WITH CCM CA TARUN GHIA

| | |
|---|--|
| On 22 nd June, CCM CA Tarun Ghia will be with us. He will talk to us about Recent Developments in Real Estate, Impact of RERA, Tax Issues in Joint Developments, Sections 50C, 43CA, 56(2) and 194IA | Time:- 10:00 am to 01:00 pm (Venue will be intimated in due course) |
|---|--|

Bhuj Branch Of WIRC Of ICAI

CA DAY (1st JULY) CELEBRATIONS

| Event | Venue | Time |
|--|--|----------------------|
| Cycling | Town Hall | 6:00 am to 8:30 am |
| Flag Hoisting | Branch Premise | 09:00 am Sharp |
| Swachchh Bharat Abhiyan | Branch Bldg area | 09:30 am to 10:30 am |
| Tree Plantation | Income Tax Office, Bhuj | 10:30 am to 11:30 am |
| Blood Donation | Jeevan Jyot Blood Bank, Hospital Road, Bhuj | 11:30 am to 12:30 pm |
| Workshop on Stress Management and Healthy Living. | Hotel Ilark, Bhuj | 04:30 pm to 06:00 pm |
| Felicitation of Senior Members (Above 70 years of Age) | Hotel Ilark, Bhuj | 06:00 pm to 06:30 pm |
| Entertainment Evening (with self contributory Dinner) | Hotel Ilark, Bhuj | 06:30 pm onwards |

AUDIT UNDER GST REGIME

Compiled by CA. Bhavik Mehta
B.Com, FCA, CS, DISA (ICAI)

The most favorite word for an assessee under dictionary of GST is REFUND, and the most favorite word for Chartered Accountant(s) under the same dictionary is AUDIT (of course after REFUND...!). Till date, whichever forms and formats are prescribed for Returns, it clearly emphasizes on self assessment processes, yet for effective compliance with the various GST provisions and to ensure transparent and fair performance, audit provisions have been incorporated under GST Act(s) and rules there under.

What is Audit under GST??

The meaning of audit is given under section 2(13) of Central Goods and Services Tax Act, 2017.

“Audit” **means** the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force to **verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed**, and to assess his compliance with the provisions of the GST Acts or the rules made there under.

There are **three types of audit** as prescribed under GST.

1. 1st type of audit is to be done by a chartered accountant or a cost accountant; and it is mandatory if Turnover exceeds Rs. 2 Crore
2. 2nd type of audit is to be done by the commissioner or any officer authorised by him in terms of Section 65 and 66 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017
3. 3rd type of audit is called the Special Audit and is to be conducted under the mandate of Section 66 of CGST Act, 2017 read with Rule 102 of CGST Rules, 2017.

Let's discuss first type of Audit – To be done by Chartered Accountant or a Cost Accountant in this Article.

To whom it is applicable??

Every registered person whose **turnover** during a financial year exceeds the prescribed limit of **Rs. 2 Crore** shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

Now, question here arises is what is meant by Turnover?? Turnover here means aggregate Turnover as defined under Section 2(6) of the CGST Act/SGST Act:

Aggregate Turnover is defined as under.

“Aggregate Turnover” **means** the aggregate value of all taxable supplies (**excluding** the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but **excludes** central tax, State tax, Union territory tax, integrated tax and cess.

Above definition is an exhaustive definition because the expression “**means**” [**and not include**] has been used. If we analyze the above definition word by word it would be easy to understand for us.

-The term “Taxable Supply” means a supply of goods or services or both which is leviable to tax under the GST Acts.

-By definition, exempt supply under GST is a broad term which **includes nil rate supplies, non-taxable supplies and specific supplies which are notified as exempt from tax.** The term “Exempt Supply” means supply of any goods or services or both which attracts **nil rate of tax** or which may be **wholly exempt** from tax under Section 11 of the CGST Act/SGST Act or under section 6 of the Integrated Goods and Services Tax Act. The term “exempt supply” includes **non-taxable supply** also. The term “**Non-taxable Supply**” means a supply of goods or services or both which is not leviable to tax under the CGST Act/SGST Act or under the IGST Act. **Examples** of non-taxable supply are Alcoholic Liquor for Human Consumption and five specified Petroleum Products i.e. Petroleum Crude,

Motor Spirit (Petrol), High Speed Diesel [HSD], Natural Gas and Aviation Turbine Fuel [ATF] .

-Value of **Export of Goods or Services** or both;

-Supplies to branches in other States having same Permanent Account Number [PAN]

Exclusions while computing the Value of Aggregate Turnover:

-Value of Inward supplies on which tax is payable by a person on Reverse Charge basis.

-Central Tax, State Tax, Union territory Tax, Integrated Tax and Cess .

(1) Applicability of Turnover Limit for the period 01.07.2017 to 31.03.2018

GST has been implemented with effect from 01.07.2017. As a consequence, during the financial year 2017-18, GST remained in force only for a period of nine months from 01.07.2017 to 31.03.2018. Now, the question which arises here, is whether the above-mentioned annual turnover limit of **Rs. 2 crore** for audit purposes shall apply proportionately in the given case for a period of nine months or whether the foregoing limit shall apply as it is for a period of nine months ?. A suitable and immediate **clarification** from the Government(s) is required in this regard.

(2) Conduct of GST Audit State-Wise

It is worth emphasizing here that for audit purposes the turnover limit of **Rs. 2 Crore** shall be computed by including turnover in all the States or Union territories, as the case may be, i.e. on all India basis under same PAN. Furthermore, the foregoing threshold turnover limit of Rs. Two Crore is **same for assessee in all the States and Union Territories**. Thus, it can be safely inferred that **no separate threshold limit** has been specified for **Special Category States**. Since each of the State GST Acts also has the provisions relating to GST Audit, it appears that the GST audit shall be conducted state-wise. It also appears that only for the purpose of

determining the eligibility of the assessee who is required to get its accounts audited by a Chartered Accountant or a Cost Accountant, the all India based turnover shall be considered. However, it shall be better if a suitable clarification from the Government(s) is issued in this regard at the earliest.

Statements and Documents to be submitted to the Proper Officer

It shall be necessary for the registered person to submit to the proper officer the following Statements and Documents:

- (a) A copy of the Audited Annual Accounts;
- (b) A Reconciliation Statement under **Section 44(2)** of the CGST Act/SGST Act i.e. a Statement reconciling the value of supplies declared in the Return furnished for the financial year with the audited Annual Financial Statements. Further, the aforesaid Reconciliation Statement shall be duly certified in **FORM GSTR-9C**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- (c) Such other documents in such form and manner as may be prescribed, officially till date, there is no form prescribed yet. Though there are Form GSTR 9C & GSTR 9D are in circulation on social media since last one month. Form GST 9C is like Form 3CA of Income Tax Audit and Form GSTR -9D is akin to Form 3CD of Income Tax. Form GSTR-9D has 13 sections and 28 Annexure in which all details needs to be given by Taxpayers under GST Audit. In total it's a 56 Page Audit Report Format.

Preparation for First GST Audit

GST had been implemented on 01.07.2017 and the first financial year in the GST Regime ended on 31.03.2018. Thus, it goes without saying that GST Audit shall be conducted for the first time. As a result, plenty of preparation is required both on the part of GST Auditor and GST Assessee. Besides, it is worth adding here that in case of Statutory Audit and Tax Audit (u/s 44AB of the Income Tax Act), the main thrust of the auditor is on the financial records. On the other hand, the scope of GST Audit is wider than

scope of audit under Income Tax Act, 1961. Resultantly, it shall become obligatory on the part of the GST Auditor to have clear and precise understanding of various provisions of GST Acts/Rules made there under [including various mandatory records to be maintained] requirements of reporting and source of information, understanding the nature of business of the concerned assessee.

Following are the various steps which a GST Auditor may take in connection with the forthcoming first GST Audit in the year 2018:

1. GST Audit shall be new to everyone. Resultantly, a number of auditees who are required to be get their accounts audited may not have sufficient knowledge about the various applicable provisions of the GST Act(s)/Rules. Therefore, it becomes essential on the part of a Chartered Accountant or a Cost Accountant to inform the concerned auditees not only about the requirement of GST audit but also about the mandatory documents and other preparations to be done by them.
2. Confirm his eligibility to be the GST Auditor in accordance with provisions of Section 2(23) [which has defined the term "**Chartered Accountant**"] or Section 2(35) [which has defined the term "**Cost Accountant**"].
2. Understand the requirements of records to be maintained and advise the client to maintain the accounts and records so required.
3. Prepare the detailed Audit Programme as well as List of Records to be verified.
4. Prepare a detailed questionnaire to understand the operations/activities of the auditees.
Special attention must be paid to transactions not appearing in the Financial Accounts, but having GST implications.
5. Prepare various Reconciliation Statements

Appointing Authority of GST Auditor and Communication with Previous Auditor

In case of a **company** the appointment of the GST auditor shall be made by a resolution of the Board of Directors or by an officer of the company, if so authorized by the Board in this behalf. In case of a **partnership firm or proprietary concern**, the appointment can be made by a partner or the proprietor or a person authorized by the assessee. The acceptance of appointment by the proposed GST Auditor shall also be communicated in writing to the assessee.

Since the GST Audit is applicable for the first time for the financial year 2017-18, requirement of communication with the previous GST Auditor shall not arise. However, it is quite possible that in the pre- GST Regime, some assessees may be subject to VAT Audit, which was undertaken by an eligible auditor. However, GST Audit of the same assessee for the year 2017-18 may be allotted to a different Auditor. Now, the question arises is whether **the new GST Auditor is required to communicate with the VAT Auditor**. It is opined that since GST Acts are separate and independent Acts and the Audit specified therein is different VAT audit, there is no need for the GST Auditor to communicate with earlier VAT Auditor, before taking up the GST audit. However, in the subsequent years, in case of change in the GST Auditor, the new auditor shall communicate with the previous auditor as per the **provisions of the Chartered Accountants Act, 1949 or Cost and Works Accountants Act, 1959**.

General Checklist for a Chartered Accountant before Accepting the Appointment as an GST Auditor

1. Any **member in part-time practice** is not entitled to perform attest function. Only partners can perform attestation function.
2. In case of **Joint Audits**, all the auditors will have to sign the audit report. If the auditors have different opinion, then they should issue separate audit reports.
3. A chartered accountant having **substantial interest** in the assessee's business cannot take up the audit.

4. A chartered accountant who is **responsible for writing or the maintenance of books of account** of an assessee is not eligible for being appointed an auditor of the same assessee.
5. **Internal auditor** of an assessee cannot be appointed as his tax auditor.
6. A chartered accountant is not eligible to accept the GST Audit of a person to whom he is indebted for more than Rs. 10,000/-.
7. A chartered accountant cannot charge professional fees based on a percentage of profit or which are contingent upon the finding or the result of the professional employment.
8. In many cases, an assessee may be having his GST registrations in many States. The assessee may appoint single auditor for all his registered establishments. Accounts and records might have been kept in the local language of the State. It is suggested that in the normal course, the auditor should not accept the audit of accounts written in a language which he/his staff does not understand.

As per Revised Minimum Recommendation Scale of Fees for the Professional assignment done by the Chartered Accountants, Committee for Capacity building of Members in Practice, has recommended fees of Rs.40000/- for Audit under GST for Class- A cities and Rs.20000/- for Class- B Cities.

Happy GST Audit season ahead with above mentioned minimum recommended fees...!!

RERA



Prepared by: CA Vaibhav Sheth, B.Com, ACA

The Indian real estate sector has witnessed a rapid growth in the graph of Indian economy. People from rural areas are shifting to urban areas to find better living opportunities, resulting in the increase of disposable incomes and demand for all forms of real estate in the country.

While the real estate sector was showing a continuous growth, people were facing various problems in buying homes due to the unethical practices and immoral activities of a few across the country. Due to delays in the project approvals and dispute resolution, the long-standing demand of the industry and consumers was not getting fulfilled. This called for an amendment and the need for reforms and a regulated sector in the real estate market.

Counting for the world-class facilities to its citizen by providing home for all, developing smart cities and advancement in infrastructure development, the Indian government came up with the Real Estate Act. This Real Estate (Regulation and Development) Act, 2016 (RERA) became effective from May 1, 2017 where each State and Union Territory would be having their own Regulatory Authority (RA) which will frame regulations and rules according to the requirement of their own State and UT.



RERA has been established for regulation and promotion of the real estate sector and to ensure sale of properties, in an efficient and transparent manner. Following are its objectives:

- a. To ensure accountability towards allottee;
- b. To infuse transparency and to reduce frauds and delays in delivery of properties;
- c. To impose strict responsibilities on builders, real estate brokers and consumers;
- d. To establish regulatory oversight mechanism to enforce contracts;
- e. To establish fast track dispute resolution mechanism;
- f. To promote good governance in real estate sector.,

These objectives are the pillars of the RERA which will aim to provide the following remedies after their implantations:

- a. To deliver the possession of the properties in time;
- b. To strictly develop the properties as per the plans approved by the authorities;
- c. To held builder liable for structural defects for 5 years after delivering the possession of the properties;

- d. To park all the bookings received in separate bank account of a schedule bank and to withdraw them in proportion of completion of the project;
- e. To charge with interest where builder delays in refunding the bookings amount to the consumer. Also, consumer can ask for compensation if the builder is unable to deliver the property within time or the property is not developed as per the plan.

Starting from the launch of a project to post-sales issues of plots, apartments, shops, offices and other such properties, the Act covers a vast range of regularities of the real estate market.

Being an author of this article, I would like to bring clarity on following matters before discussing on RERA:



1. RERA is applicable in planning areas only. The authority has well listed out the planning areas of Gujarat among which following areas are the planning areas of Kutch district:

- a. Bhuj Area Development Authority (BHADA);
 - b. Rapar Area Development;
 - c. Bhachau Area Development;
 - d. Anjar Area Development;
 - e. Mandvi Municipality;
 - f. Gandhidham Development Authority;
 - g. Kandla SEZ;
 - h. Mundra Port & Special Economic Zone;
 - i. Nagarpalika declared under Gujarat Municipalities Act, 1963 and;
 - j. All industrial estates or industrial areas under the jurisdiction of Gujarat Industrial Development Corporation Act, 1962.
2. RERA is also applicable on sale plotting projects i.e. where a piece of land is purchased and plotted into various plots and thereafter plots are sold.
 3. RERA is applicable only when there is a sale of real estate project. It means that RERA is not applicable on rent and lease transactions.
 4. RERA has put more emphasis on promoter means a builder of the real estate project. It is not necessary that the builder should possess the land. If the builder develops a real estate project in a Joint Development Agreement with a person who owns the land, then in this case both the builder and the owner of the land shall be consider as a promoter for the purpose of RERA. Further, a contractor who constructs the real estate project as per the direction and requirement of the builder is not a promoter for the purpose of RERA.
 5. Promoter shall not do advertisement in any manner or offer for sale or invite persons to purchase in any manner any plot, shop, building, as the case may be, under any planning area within Gujarat, without registering the real estate project with the Gujarat Real Estate Regulatory Authority(GUJRERA).

All commercial and residential real estate projects in any planning area will have to register where it satisfies any one or more of the below mentioned conditions:

- a. area of land proposed to be developed exceeds 500 sq mtrs;
- b. number of apartments proposed to be developed exceeds 8 inclusive of all phases;
- c. renovation or repair or re-development projects which involve marketing, advertising, selling to new allotment any apartment, plot or building, as the case may be;

Ongoing projects in the planning area which satisfies any one or more of the conditions as stated above which has not received completion certificate (occupancy certificate/ B U permission) as on 01st May 2017, shall register their project with RERA authorities within 3 months from 01st May 2017 i.e. before 1st July 2017. However, GUJRERA authority has extended the date of registration of ongoing projects from 1st July to 31st December 2017 wide order no. 2 dated 28.11.2017.

GUJRERA wide its order no. 3 dated 30.12.2017 has ordered that any such ongoing projects which failed to get registered upto 31st December 2017 and had registered thereafter, will attract 2.5 times of regular fees as a penalty.



Above penalty was for those real estate projects which were ongoing as on the date of 01st May 2017 and which failed to register before 31st December 2017. If any promoter commenced any real estate projects in any planning area on or after 01st May 2017 but failed to get it register, then he shall be liable for penalty upto 10% of estimated cost of such real estate project. Further, if the promoter also does not comply with any order or directions issued by the RERA Authority with respect to its registration, he shall be liable for penalty upto 10% of estimate cost of such real estate project, imprisonment upto 3 years or both.

Where any real estate project is developed in phases, every such phase shall be considered a standalone real estate project and the promoter shall obtain registration under this Act for each phase separately.

The act also given powers to the Authority that in the interest of allottees, the Authority may order / direct the promoter to register projects even if its real estate project is falling beyond the planning area.

RERA does not ends here, there are provisions relating to revocation of registration granted, extension of registration and their procedures, registration of real estate agents and its procedure, functions and duties of promoter, consumer and real estate agents and most importantly the procedure of withdrawal of money from separate bank account kept, all these will be discussed in the later editions.

CLAUSE 17 OF FORM 3CDCA AISHWARYA JOSHI
B.com , ACA

Clause - 17 Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, please furnish:

| <i>Details of property</i> | <i>Consideration received or accrued</i> | <i>Value adopted or assessed</i> |
|----------------------------|--|----------------------------------|
| | | |

SECTION 50C :Special provision for full value of consideration in certain cases.

Section 50C of the Income Tax Act, 1961 was introduced by Finance Act, 2002 w.e.f 1.4.2003 which prescribes similar provisions in the case of transfer of land or building or both held in the nature of "capital asset".

Section **50C is applicable** where the assessee **has transferred a capital asset being land or building or both** and the value of such an asset is less than the value adopted or assessed or assessable by any State Government authority for the purpose of payment of stamp duty. In such a case, for purpose of section 48, the value so adopted or assessed or assessable by stamp duty authority shall be deemed to be the full value of consideration.

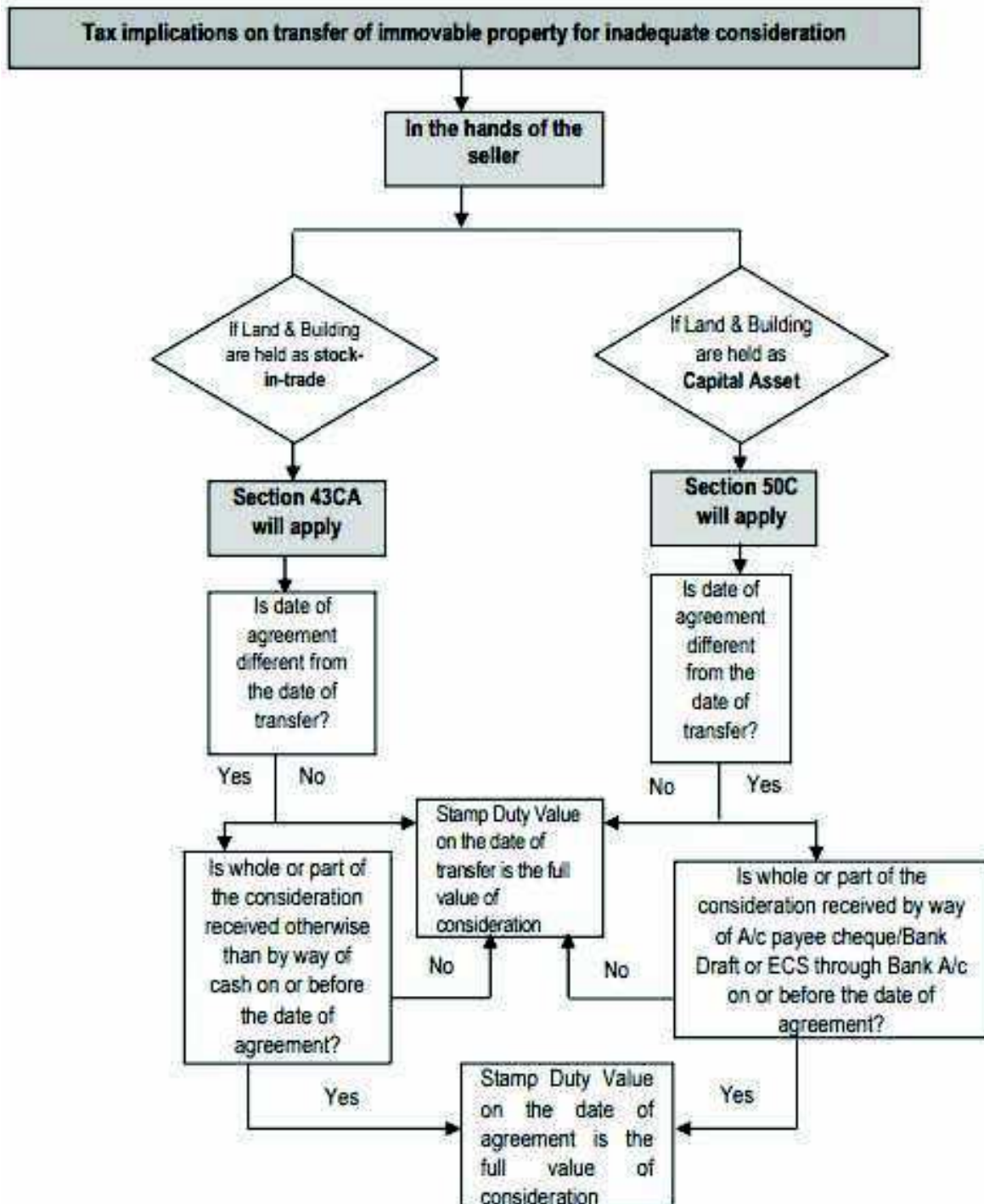
SECTION 43CA :Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.

Finance Act, 2013 has inserted a new section 43CA under the Income Tax Act, 1961 which is applicable from Financial Year 2013-14, introducing the provisions for taxability of transfer of immovable property (land or building or both) held in the nature of stock in trade, on the same lines which are applicable for immovable property held in the nature of "capital asset" under section 50C of the Act.

Section **43CA is applicable** where the assessee has **transferred an asset (other than a capital asset) being land or building or both** and the value of such an asset **is less than the value adopted or assessed or assessable by any State Government authority** for the purpose of payment of **stamp duty**. In such a case for purpose of **computing profit & gains from such transfer**, the **value so adopted** or assessed or assessable shall be **deemed** to be the full value of consideration.

Following proviso shall be inserted in sub-section (1) of section 43CA & sub-section (1) of section 50C by the Finance Act, 2018, w.e.f. 1-4-2019 :

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.



Section 43CA deals with the **computation for developers** and **Section 50C** deals with this situation where the immovable property is a **capital asset**. Both the provisions provide that where the value of apparent consideration is lower than the value adopted for the stamp duty payment, the difference between the value as declared in the agreement and value assessed becomes taxable in the hands of the seller. If it is a business asset, the same becomes taxable as business income and if its capital asset it becomes taxable as capital gains.

In order to reduce the litigation and hardship to both, the seller and buyers, in case of minor difference between the value assessed and apparent consideration, the finance minister has proposed that the provisions of Section 43CA and 50C shall not be applicable, in case the difference between these two values does not exceed five per cent. Likewise, the buyer will also not be required to pay any tax under Section 56(2), if the difference does not exceed five per cent. Even in case the difference between both these values is higher than five per cent but does not exceed 50,000, the buyer will not be required to pay any tax on such difference.

Since Section 50C uses the word 'capital asset', its provisions can be invoked only if the land or buildings sold during the year is a capital asset. Stock in trade has been excluded from the definition of capital asset by sec. 2(14). As a result, the flats/building constructed and sold by builders and developers which are their business activity, and their 'stock-in-trade', could not be brought into Sec. 50C. Therefore the valuation done by stamp valuation authorities could not be substituted for apparent sale consideration in case of the transfer of flats/buildings even if such valuation by stamp valuation authorities was more than apparent sale consideration. In order to cover this apparent source of investment of unaccounted money, the new provision has been introduced to bring the transfer of land or building or both (being stock in trade) at par with section 50C and now the valuation done by stamp valuation authorities could be substituted for apparent sale consideration.

Some courts held that Section 50C being limitedly applicable to assessment of capital gains cannot apply to assessee holding land/building as his stock-in-trade. By insertion of new provision Section 43CA, all such decisions will be made ineffective.

In certain cases in the past, the tax authorities tried to extend the applicability of the provision of Section 50C to cover cases of transfer of such immovable property held as stock in trade, i.e. for real estate developers and builders etc. However, *Allahabad High Court in the case of CIT vs. Kan Construction And Colonizers P Ltd. 70 DTR 169 (All)* and *Madras High Court in the case of CIT vs. Thiruvengadam Investments P Ltd. 320 ITR 345 (Mad)* held that Section 50C has limited applicability to capital gains' assessment and can not apply to assessee holding land or building as trader (stock in trade) and assessed for the same under the head "Income from business". As per new section 43CA, it is apparent that the intent of the provision of Section 50C applicable in the case of "capital asset" has been extended to real estate developer/ builder holding land or building as stock in trade.

Case Law:**Pradhan Housing Private Limited, ... vs Department Of Income Tax on 29 April, 2016**

- **Brief Facts :**

Assessee company is engaged in the business of construction , During the course of assessment proceedings, AO noticed that ITA No 1599 of 2014 Pradhan Housing P Ltd Hyderabad the assessee has sold a property admeasuring 8214.19 sq. yards together with 3 years old RCC building consisting of ground and 1st floors situated at Mindi Village within the limits of Greater Visakhapatnam Municipal Corporation area. He observed that the assessee has shown the market value of the property at Rs.3,78,00,000 in the sale deed and accordingly the stamp duty of Rs.35,92,250 was levied by the Sub Registrar on the chargeable value of Rs.3,78,10,500. He observed that the assessee has shown the value of the property at Rs.2.00 crores only in the computation of income and since there is a variation in the value of the income as shown by the assessee to the extent of Rs.1,78,00,000 (i.e. 3,78,00,000 - Rs.2,00,00,000), the AO held that this amount of Rs.1.78 crores is liable to be added as deemed business income as according to him the assessee suppressed the real value of the property sold. He accordingly brought the sum of Rs.1,78,00,000 and treated the same as business income of the assessee for the year under consideration. Aggrieved by the said addition, assessee preferred an appeal before the CIT (A).

- **Held :**

Hon'ble Allahabad High Court in the case of Kan Construction & Colonizers Pvt. Ltd (cited Supra) held that 50C gives rise to deeming fiction and that such deeming fiction is to be applied in case of computation of capital gain u/s 48 only. It is not in dispute that the assessee is in construction activity and the AO has treated the income from sale of the landed property as "business income". While computing the business income, the AO has invoked the provisions of section 50C to bring to tax, the difference between the value shown by the assessee for registration purposes and the value shown in its computation of his business income.

Therefore, it is clear that the deeming provisions of section 50C cannot be applied to income other than capital gains. The AO has applied 50C provision to the income computed under the head business income which is not sustainable and therefore, the deeming ITA No 1599 of 2014 Pradhan Housing P Ltd Hyderabad provisions cannot be applied

LIABILITY OF AUDITOR TO FURNISH DETAILS IN CLAUSE 17 OF FORM 3CD :

Where **any land or building or both** is transferred during the previous year **for a consideration less than value adopted** or assessed or assessable by any authority of a

State Government referred to in section 43CA or 50C, the **auditor is required to furnish** the following details:

- a. Details of property
- b. Consideration received or accrued
- c. Value adopted or assessed or assessable

If the assessee has **transferred more than one property**, the **detail of all** such properties is required to be mentioned. The auditor should obtain a list of all properties transferred by the assessee during the previous year. He may also verify the same from the statement of profit and loss or balance sheet, as the case may be.

For reporting the value adopted or assessed or assessable, the auditor should obtain:

- A copy of **registered sale deed** , in case, the property is registered
- In case the property is not registered, the auditor may verify **relevant documents** from relevant authorities or obtain **third party expert** like lawyer, **solicitor representation** to satisfy the compliance of section 43CA/ section 50C.
- In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his report 3CA/CB.
- Auditor would have to apply professional judgment as to what constitutes land or building for e.g. whether leasehold right / development rights would fall under this provisions or not, would require to be evaluated based on facts & circumstances of transactions.

SCOPE OF LIMITED SCRUTINY IN THE BACKGROUND OF A HIGH COURT JUDGMENT

CA YASH BHINDE
B.Com., ACA

SUNRISE ACADEMY OF MEDICAL SPECIALITIES (INDIA) PRIVATE LIMITED VS. ITO (KERALA HIGH COURT) (2018)

FACTS OF THE CASE:

Assessee has filed the return of income of A.Y. 2015-16 disclosing NIL income. However, it has issued share having a face value of Rs. 100/- each at a premium of Rs. 291/- per share amounting to Rs. 2,13,92,000/- during the year. In response to this return, Assessing Officer has issued the notice - A limited scrutiny notice u/s 143(2). The reason stated in the notice for the scrutiny was whether the funds received by the assessee in the form of share premium are from disclosed sources and whether the same have been correctly offered for tax. In reply, assessee has disclosed the source of such share premium amount and the same has been correctly offered to tax. However, Assessing officer has issued further notice stating fair valuation of the share can only be Rs. 100/- and therefore the share premium shall be chargeable to tax u/s 56(2)(viib) under the head of Income from Other Sources and assessee was asked to furnish the objection against it if any. Assessee in reply takes a disputed stand against the assessing officer. However, after giving an opportunity of being heard to the assessee, Assessing Officer has issued the order demanding the tax on share premium of Rs. 2,13,92,000/-. At this point of time, assessee has an option to appeal it against the higher authority, however assessee has filed a writ petition to the High Court challenging the proceedings of the order on the grounds that the said order is beyond jurisdiction and thus invalid. For this, assessee has relied on the instructions issued by the CBDT which are applicable in cases of limited scrutiny.

INSTRUCTIONS:

(Instruction No. 7/2014, 20/2015, 5/2016)

The aforesaid documents issued by CBDT instructing the assessing officers that when the cases are being selected for the scrutiny on the basis of AIR/CIB/26AS mis-matches data (i.e. limited scrutiny) **the scope of the enquiry should be limited to verification to that particular aspect only**. Further, if during the proceeding, if it is found that there is potential escapement of income beyond stated limit (i.e. Rs. 10.00/- lakh for metro cities and Rs. 5.00/- lakh for the rest) or any other matter which require substantial verification, the case may be taken up for comprehensive scrutiny with the prior approval of the PRINCIPLE CIT/DIT in writing after being satisfied him about the merit of the issues and the same shall be monitored by the Jt. CIT/Add. CIT.

QUESTION BEFORE COURT:

On the basis of aforesaid instructions, whether the assessing officer has acted beyond scope of the issue mentioned in the notice while passing the aforesaid order?

HELD:

While judging the case, the court has put the emphasised on the notice issued by the department to the assessee, which reads as follows:

“Whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax.”

The issue consists of two parts: (i) whether the funds received in the form of share premium are from disclosed sources and (ii) whether the same has been correctly offered for tax.

Court noted that whether the funds have been correctly offered for the tax or not, the same can only be examined in accordance with section 56(2)(viib) of the act and which says that *where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares is liable to be assessed as income from other sources* and thus assessee cannot challenge the impugned order merely on the ground that the funds have been assessed with reference to section 56(2)(viib).

Further court has stated that circulars/instructions relied by the assessee have no application to the fact of this case and the same would apply only in cases where the assessing officer needs to take the case for the comprehensive scrutiny on basis of the findings that there is potential escapement of income on other issues. In this case, assessing officer has not taken the case for the comprehensive scrutiny by inquiring the other issues of the assessee. And thus petition of the assessee cannot be accepted.

SUMMARY:

Main purpose of CBDT by issuing such documents is to avoid unnecessary harassment to taxpayers and to ensure that in such cases, the scrutiny should be completed expeditiously in minimum possible number of hearing without unnecessary dragging it. But the same cannot restrict the scope of the assessing officer to assess the particular reason properly. Aforesaid documents can only be helpful when the department goes beyond the scope of limited purpose notice and demanding other information.

**NEW ITR FORMS-TOWARDS DETTERING TAX
AVOIDANCE**

VENIL VIJAY SHAH

This presentation was selected as **First Winner** at the Elocution Contest under Branch Level Students' Talent Search-2018

The examination has been proponed and the paper has been made tougher as well as lengthier. Confused! Let me explain. The examination has been proponed by insertion of Section 234F to The Income Tax Act,1961. It requires every assessee to file his return of income on or before the due date prescribed u/s 139(1). Now, if someone fails to file his return within the due date, he will be allowed to file the return by payment of additional fees prescribed u/s 234F, that too, till the end of relevant assessment year only. Why has the Department done so. The reason is obvious:

To ensure that timely revenue accrues to the Department and if all the returns are filed timely, the Department can complete the assessment procedures in a timely manner. In this way, the examination has been proponed. The paper has been made tougher as well as lengthier through various amendments in the new ITR forms for A.Y. 2018-19 vide Circular dated 03.04.2018, which are summarized as follows:

- ❖ **SALARY RETURN (ITR-1):** Salary return was known since years for its simplicity as the taxpayers were just required to report the total figures of salary and income from house property. But then the eyes of Department opened when in January, this year, a Chartered Accountant committed a fraud by revising the return of various IT employees of Bangalore and claiming refunds through seeking bogus deduction and losses, thereby causing a loss of Rs.18 Crores to the revenue. This opened the eyes of Department and the Department has started seeking the breakup of each and every item of salary to reported in the return and the same to be compared with Form-16 issued by the employer and in the event of any variation, notice u/s 143(1A) needs to be answered. With these changes, ITR-1 termed by Department as 'SAHAJ' no more remains 'SAHAJ'.

- ❖ **GST REPORTING:** The most significant change brought in the ITR forms is with reference to GST reporting, wherein earlier the Indirect Tax and Direct Tax Department functioning independently have joined hands to avoid any leakage of TAX (either GST or Income Tax). ITR-4 requires the assessee to report the aggregate t/o under GST. Also Section 35(4) envisaging GST Audit requires a reconciliation statement between IT and GST to be furnished by the Chartered Accountant. In this way, it no longer remains prudent for the assessee to speak different stories before the 2 Departments as there are high chances of his being caught

Besides, in ITR-6 form applicable to Corporates (not required to be audited u/s 44AB), reporting with reference to certain specified items of indirect expenses has been introduced. Indirect expenses are generally, the major tool in the hands of management to adjust profits by passing fictitious JV's. The new forms require details like total of such expenses to be segregated into: paid to registered person, paid to unregistered person or paid to composition taxable person. Now, if for e.g. an assessee has out of Rs.20 lakhs of such expenses incurred 19 lakhs towards unregistered persons, the Department can definitely smell foul play in the transaction and take appropriate actions.

- ❖ **BALANCE SHEET PARTICULARS:** Form ITR-4 is applicable for presumptive taxation scheme. What is a presumption? A person comes out of the examination hall and claims that he will get around 90 marks, however, he has no proper basis in support of it. In the same manner, as in presumptive taxation, no books of accounts, were required to be kept, the assessee's were required to report just the 4 figures under Balance Sheet. But the new forms require all the financial particulars like Fixed Assets, Loans and Advances, Other Assets, Secured Loans, Other Liabilities also to be furnished, which means the entire balance sheet of assessee except personal assets and investments of the assessee is in the hands of Department on which Department can apply various procedures and compare YoY capital. The CA Final exam paper is supposed to be tougher than CA IPCC paper! But not here. Assessee's filing ITR-3 and opting for presumptive taxation are still required to report those 4 figures, which shows that Department has not done its homework properly. But rather than complaining, we must take

advantage of it, as within no time we can expect the ITR-3 Form to stand amended with these changes.

- ❖ **SECTOR SPECIFIC DETAILS:** Earlier we were just required to mention whether the assessee was a wholesaler, retailer or out of a list of few specified services. But the new forms have introduced a long list of sectors wherein if the assessee is a trader, whether a wholesaler/retailer and that too of which commodity. No doubt this will add our 2 minutes toil while filing the return, but will also enable the Department to compare margins and ratios of various sectors.
- ❖ **POLITICAL PARTIES:** Political parties are required to specifically report any donation exceeding Rs.2,000 in cash received by them so as avoid the deduction to the donator under 80GGB/80GGC.
- ❖ **CAPITAL GAIN DEDUCTIONS:** We all leave our shoes outside the temple, but hesitate in keeping mobile phones/wallets there applying the concept of MATERIALITY. In the same manner, where the Department has shown a red eye to petty allowances in Form ITR-1, how can the Department leave large deductions under Section 54 for capital gains at God's helm. The new ITR forms seek all the details for such deductions like date of sale of asset, date of which investment has been made in specified asset to claim deduction, date of deposit to Capital Gain Account Scheme etc. Hence, haphazard deduction under these section will now be difficult to be made.

At the end of this discussion, one very obvious question: Why is Department doing so? If the assessee does not honestly pay taxes, the Department has several measures like scrutiny, re- assessment, search, survey to recover taxes alongwith interest. But in a population of 1.3 billions, where the normal is 'not paying the tax', it is not possible for the Department to apply such procedures to every tax evader. Hence, the Department is trying to deter tax avoidance at the grassroot level and the changes in the new ITR forms by the Department are a part of it.

Impact of Automation on Employment in India

Kinnaree Thacker

This presentation was selected as **Second Winner** at the Elocution Contest under Branch Level Students' Talent Search-2018

Automation can be said to be the creation or application of technology to monitor and control each and every process right from the production till delivery of products or services, thus requiring minimum human assistance. Automation is spread across different segments of the economy, such as, manufacturing, transportation, utilities, defence, services, etc. Automation has the potential to transform future jobs and the structure of the labour force. It can be for a small household work to a huge industrial area for ample of production.

Introduction of driverless metros in Delhi, the news of layoffs in big IT companies like Infosys and Tech Mahindra due to automation, the threat to employment opportunities from information and communication technologies, artificial intelligence and robotics in banking, pharmaceuticals, food and beverages, logistics and security sectors are indications of its impact on employment scenario in the country.

Starting with the positive impacts on job creation in the country:

- A company which resorts to automation offers goods and services at lower costs than traditional providers, these result in more savings by individuals and companies which will in turn be utilized as capital by the industry, which will lead to the creation of more jobs.
- Automation raises the efficiency and productivity. The e-procurement initiatives by the Indian government have led to more qualitative infrastructure as it invites the bidders from even the non-project areas. The better socioeconomic infrastructure always attracts more investment, production and more employment opportunities.
- Under normal circumstances, automation takes place to reduce costs by a firm. Reduction in costs leads to more profits. Increase in profits ensures more funds for innovation and research by companies, which in turn lead to the development of new technologies and consequently, more jobs.

Logistics problems regarding delivery speeds and efficient space allocation in shipping containers and trucks are solved due to automation. AI robots that search databases of medical records have also entered the market. They search through data to diagnose or find patterns, and are sometimes more accurate than human medical professionals.

Heads of IBM Research India Sriram Raghavan agrees that in a developing country like India, automation normally fills gaps rather than replacing people. India has 330,000 fewer doctors than the WHO's minimum recommendation, but Raghavan says automation can help plug this kind of talent shortage. Smart machines combined with the internet could allow doctors and teachers to provide personalized services to many more people than they can today.

Despite these, automation is not without its share of criticisms as everything has its pros and cons. The following are some of the adverse impacts of automation on creation of jobs in the country.

- Automation leads to an emergence of new forms of jobs which are the jobs on-demand in economy. These new forms of jobs are freelancing in nature and leads to erosion of workers' bargaining power.
- Initial Investment Costs of the machines are so high that several industries wash off their funds for procuring them.
- The operating of these machines require certain highly skilled labour which is very difficult to get in an economy like that of ours.

According to certain reports including that of World Bank, automation threatens 69% of the jobs in India. The major challenge before the India is to find jobs for its working-age population which is forecast to increase 1.3 billion by 2050. On the other hand, job creation is not expected to rise to such level.

By 2020, majority of customer service transactions may be powered by AI and completely free of human interaction. Also, several people are injured and killed in road accidents frequently, thus promoting automation in this sector. Delivery drivers,

long haul drivers, and public transit drivers are all likely to be affected. Personal self-driving cars are expected to hit the market very soon.

Not only these, but automation affects many other sectors of economy. For example: On using the machines and automated tools in a farm the farm labours and workers performing those jobs, which now the machine can do, will be unemployed or under employed. Tata Group is exploring use of automation to improve the lives of the workforce and bring in efficiency. The group is working on a precision agriculture technology where an unmanned aerial vehicle or a drone can be used for aerial spraying on farms. Companies like Skylark Drones; a Bangalore-based startup is providing its assistance in this sector.

Automation is a threat to 69% of jobs, which means that it will do the work done by 69% of workforce. Thus it does not imply that those 69% will be unemployed. Certain people will be required to monitor the work process whereas there will be decrease in the working hours of certain people instead of complete layoff. Say if a worker works for 60 hours a week then his working hours may decrease by 40 hours a week due to automation in certain jobs. This is exactly what happened at the time of Industrial Revolution which can said to be the start of use of machines in the industries. It is the biggest example of impact of automation on employment.

In earlier days, Ahmadabad was said to be the "Manchester of East" due to the cloth produced in the city. But due to the Industrial Revolution, several cloth industries were shut down in the city, resulting to layoffs, as the cloth produced by humans in those cloth mills could not compete with the one produced by the machines as the production by machine was faster, cheaper, better in quality and was produced in large quantities. So if at the initial stage the machines could affect the employment, after these many years and advancement in the automation sector the workers with low skill sets will definitely be the first ones to be affected. Recently, numerous manmade fibre textile mills have been shutdown in various states across the nation giving a big hit to the employment and rendering numerous people jobless.

Another example could be of the retail trade segment. In many stores across the globe self service checkouts have been introduced to reduce manual work. Taking a step further, Panasonic has launched an automated basket in certain stores in Japan which automatically detects the goods kept into the basket and the goods fall into the bag directly once it is done eliminating the manual work. It is similar to the concept of the Amazon Stores. Now if these are introduced in India, it will give a huge hit to the people working in various areas on the retail segment, as there are a huge number of stores in this sector across the nation. Even for the billing purposes, robots or advanced machines are used rendering the cashiers jobless.

Cognizant Technology Solutions is a firm headquartered in the US but with the bulk of its workforce in India. Now software can carry out routine IT support work and repetitive back office tasks - the very tasks global companies originally outsourced to India. Meanwhile, India's third-largest IT firm, Infosys, said automation allowed it to shift 9,000 workers from low-skill jobs to more advanced projects as it has already started training its employees for the advance jobs. Its competitor Wipro redeployed 3,200 in 2017, and predicts it will move another 4,500 this year. Yet a reduction of jobs from 20-25% is expected in IT sector in next 3 years.

Robots replacing jobs completely very soon is unrealistic but the effects are already being felt. Last September, Indian textiles giant Raymond said it would replace 10,000 jobs with robots over three years. Also, at Hyundai's plant in Chennai entire body shop and the paint shop was automated and the majority of the body shop employees lost their jobs.

A company named Grey Orange builds 'Butler' robots that fetch and store products and 'Sorters' that automatically scan and sort packages in the warehouses of e commerce and logistics giants like Flipkart and Jabong. The Butler robot can pick up to 600 items an hour. This is a work done by numerous humans together.

There are certain tools these days which help in choosing the most relevant legal solutions from many cases and presents them in natural language. Also, in our profession automation has made the work a lot easier. The compliances with regard

to the Companies Act, which was once a very tedious work, have been made much easier with the introduction of the MCA portal. Not only this, but the entire GST Mechanism is completely through its online portal. Also the filings under the Income Tax Act are now online, say E>Returns. The Government is also planning to make the entire scrutiny process under the act as E-Scrutiny thus eliminating the manual intervention. All these factors together curb the corruption in such areas.

With automation taking on the routine tasks at the heart of today's workplace, the jobs of the future will focus on skills like critical thinking, collaboration and creativity. The changes going on in the world, including automation, are not something decided by us – but it's going to happen and thus fighting automation is futile. Thus the only option is to develop the skills of the workforce and youth by initiatives like Skill India Campaign. Also to minimize the impact of automation flexibility in labour laws, focus on SME Sector and laws for employee protection are must.

The Indian economy is in transition. Recent initiatives like demonetization and Goods and Services Tax (GST) are yet to deliver the results. The technological advancements are preconditions to sustain high growth levels in the economy but whenever it happens it is quite natural that it leads to anxieties about job losses. And the reason for worry in India is its impact even on white-collar jobs. Since unemployment is a socio-economic problem, the government, especially the NITI Aayog, should dwell into the issue and come up with a right mix of solution keeping in view the varied interests of the economy as a whole.

At last, the fear of past was that people would become slaves of other people but the fear of future is that people would become slaves of robots and machines. But, we should not forget the fact that these robots and machines are ultimately invented by us. There are certain sectors even today wherein the work done by humans is far more qualitative than the work done by the machines, say the footwear by the designers, chocolates or the handicraft work done by the craftsmen. No matter how advanced the machines are but there are two tasks in which they can never surpass any human and that is the imagination of our mind and the feelings of heart. Thus, the machines cannot snatch our work completely; we just need to improve our skills to secure the employment.

Place of Supply under GST

Vrushali Shah

This presentation was selected as **Third Winner** at the Elocution Contest under Branch Level Students' Talent Search-2018

GST. These are the most talked about alphabets in India for past year and a half. And why not! GST is undoubtedly the biggest of tax reform in the History of the country. It is hailed as "One Nation, One Tax."

With reference to the topic that I have selected, three of the objectives of the GST are relevant.

- 1. Expand the tax base or tax net*
- 2. Altered revenue sharing between the Centre and the states*
- 3. Change to "destination based" or "consumption based" tax from "origin based" or "production based" tax.*

To achieve these goals, GST, like any other idea, needed some concept that will help it achieve its objective. The concept that GST developed is, the concept of "place of supply,"

Before dealing with the actual provisions related to place of supply, let us see how important this concept is to the GST. Let us try and understand how this concept of place of supply helps in achieving the three objectives that we just talked about.

Every taxing statute does try to maximize its coverage. The idea is to make a law in such a way that all intended areas are covered under the tax net and out of the areas covered nothing should escape the tax net. In GST, the concept of place of supply is used to ensure these two objectives. The concepts of Place of supply along with the concepts of location of the supplier and location of the recipient go on to decide whether a transaction will be taxed or not. To ensure that a transaction does not escape, the statute simply makes sure that it determines its place of supply in taxable territory. This is an easy and effective way to ensure comprehensive coverage.

India is known for its "unity in diversity." Similarly, in the slogan "one nation one tax," the "one tax" is actually a "basket of four taxes." And these taxes are also to be allocated between the centre and the states. This fact gives rise to a number of questions. The main question is, which tax will a supply attract? CGST/SGST or IGST? The next question will be how to share the tax that is collected, between centre and the states? Here also, the concept of "place of supply" plays an important role. The concept of place of supply, along with the concept of the location of the

supplier will determine whether the supply is interstate supply or intra state supply. The revenue sharing model is based on whether the supply is intrastate or interstate.

Switching over to consumption base or destination based taxation was very technical issues. The entire concept is incorporated only and only through this concept of "place of supply." This concept is designed in such a way that it favours the state where the supply is consumed. It does so by giving the power to tax a supply to the state where the supply is consumed. Earlier tax systems were in favour of the state where production was taking place. The change has been brought about through this concept of place of supply.

Provisions related to place of supply relate more to the facts and narration of the same as it may sound monotonous. However, if we try and relate them to the purpose which they seek to achieve, it may be interesting.

Exports are always given concessional treatment in taxation. This may be the reason why section decides that for all exports place of supply shall be outside India. The reason is, to keep anything out of GST net taking place of supply outside of taxable territory is the easiest way.

Similarly, imports are always intended to be taxed. So, in order to ensure that no import escapes GST, section 11 links the place of supply to the location of the importer.

Coming to supply of Goods, it is the destination based tax concept that has prompted the law to link place of supply to the place of delivery, assuming that goods are most likely to be used at a place where they are delivered. That is why when goods are moved, place of supply is where movement terminates for delivery and they don't move, place of supply is location at the time of delivery. Who moves the goods, supplier or recipient is not important here. On the same logic, place of supply of assembled goods is the place of assembly.

In this destination based model of taxation two questions may be asked to find out the destination or consumption; One, "where" the supply is consumed, and second, "who" consumed the supply.

As we saw earlier, for goods, most of the times we need to ask "where" are they consumed. Only in case where they are delivered "on instruction of someone," the place of supply will be decided by "who" issued the instruction. Place of supply will not be the destination of delivery but the place of the person giving instruction.

As we move on to services this game between "who" consumed it and "where" it is consumed gets more interesting.

For services related to immovable property and restaurant-catering and like services, “where” it is consumed wins. Place of supply is made entirely dependent on where the property is located and where the restaurant-catering etc is performed. Here, “who” consumed it is not relevant at all.

For Banking-financial-stock broking services, “who” is the winner. Place of supply is determined on the basis of the address of the recipient, the recipient may be registered or not. Only in case the address of recipient is not available, place of supply will be “where” the services are provided by the supplier that is location of the supplier.

In telecom services, it is a “draw” between who and where. If there are physical installation, place of supply will be “where” they are installed. Where coupons etc are sold, it is “where” they are sold. Whereas in post paid connections online recharge etc, “who” consumed wins as the place of supply, is decided by the address of the recipient.

For services like training, admission to event, organization of event, if recipient is registered person, “who” consumed it has an upper hand and the location id decided as the location of such registered person. If provided to unregistered person, “where” they are performed will determine the place of supply. Similarly, for transport of goods and passengers, “who” consumed it has precedence if provided to a registered person. Else, destination of goods and place where passenger starts the journey will determine the place of supply.

Overall, except for exceptions discussed before, for services, the basic rule is in favour of “who” consumes it, if it is a registered person his location is place of supply. If it is an unregistered person, his address available with the provider is the place. If nothing of the two is there, ultimately location of the supplier will determine the place of supply.

There are separate provisions for situations where either provider of service or recipient is out of India. Section 13, as a general rule favours the “who” consumed concept and states that location of the recipient is the place of supply. However, it carves out exceptions and for each of the exceptional services the place of supply is made dependent on;

- 1. “Where” it is performed. This is true where physical availability of goods is required,*
- 2. “Where” it is located ,in case of immovable property*
- 3. “Where” it is held, in case of admission to events, organizing of event etc.*
- 4. “Where” it is destined, in case of transportation of goods*
- 5. “Where” it commences, in case of passenger transport*

For Banking-Financial-NBFC, intermediary services etc., place of supply is made dependent on the location of the provider which effectively means, where it is provided.

The concept of place of supply is a good example of how deeply a concept can influence a statute. It may be taken as an example of how a statute strives for comprehensive coverage by taking care of minutest of real life situations. Learning it, understanding it may stand a student of law in good stead.



Winners of the Students' Talent Search Branch Level Elocution Contest. From left to right; 1st winner Venil Shal, 2nd winner Kinnaree Thacker and 3rd winner Vrushali Shah



Quiz Contest under Branch Level Students' talent Search, 2018. Quiz Master CA Kapil Thacker and contestants.



CPE held on 29-05-2018

From left to right, CA Darshan Khandol, Branch Chairman, CA Vikas Jain, Faculty, CA Hardik Thacker, Vice Chairman and WICASA Chairman

FAREWELL CUM WELCOME FUNCTION FOR INCOME TAX OFFICERS HELD ON 07-06-2018



CPE HELD ON 21-05-2018



CA Hardik P.Thacker, Faculty and CA Deep Koradia, Faculty



Winner of the Instrument Music, Mansi Thacker



Venil Shah and Kaushal Vora
Winners of Quiz Contest



Janki Rajput and Meghana Thacker
Runners up-Quiz Contest



Madeva Chavda and Shahid Memon
Second Runners up-Quiz Contest

DISCLAIMER

The views and opinions expressed or implied in this newsletter are those of the authors and do not necessarily reflect those of the Branch. The Branch is not in any way responsible for the result of any action taken on the basis of views and opinions expressed in this newsletter.